IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 12957 of 2007
DATE OF DECISION: 21.8.2007

Bhim Garg

…Petitioner

Versus

The Debt Recovery Tribunal-II, Chandigarh and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Harsimran Singh Sethi, Advocate,
for the petitioner.

JUDGMENT

M.M. KUMAR, J.

This petition filed by a guarantor prays for quashing order dated 6.7.2007 (P-1), passed by the Debts Recovery Tribunal, wherein direction has been issued for selling the mortgaged property belonging to the petitioner as well as principal borrowers. It is admitted position that the outstanding amount due to the bank is about Rs. 28,52,833/- plus costs of Rs. 57,750/- plus future interest to be calculated w.e.f. 6.3.2007. There are three properties which have been ordered to be auctioned by the order of the Tribunal. The property at Sr. No. 1 out of three following properties belongs to the petitioner:

"(1) Property No. 1 – Plot measuring 3 Kanal 19 marla owned by Shri Bhim Garg son of Shri Gurdianmal in Khasra No. 1//17 Min (2-01), 1//24/1 (2-18) Khewat Khata No. 46/96, situated at Mansa Khurd, Tehsil and District Mansa. The reserve price is fixed at Rs. 12,00,000/- and earnest money is Rs. 3,00,000/- for the property. Public auction of the property shall be held on 27.8.2007, at the site.

(2) Property No. 2 – Plot measuring 1 Kanal 0 Marla, owned by Shri Om Parkash son of Shri Des Raj, comprised in Khasra No. 1//17Min (0-19), 24/1(0-1), Khewat Khata No. 16/96, situated at Mansa Khurd, Tehsil and District Mansa. The reserve price is fixed at Rs. 2,54,000/- and earnest money is Rs. 63,500/-. Public auction of the property shall be held on 28.8.2007 at the site.

(3) Property No. 3 – Plot measuring 3 Kanal 1 Marla of M/s Balaji Felt Industries (jointly owned by Shri Om Prakash son of Deshraj and Shri Vijinder Kumar son of Ludar Paul), comprised in Khasra No. 1//24/1, Min (3-1), Khewat Khata No. 46/96, situated at Mansa Khurd, Tehsil and District Mansa, Sale Deed No. 2267, dated 4.7.2002. The reserve price

is fixed at Rs. 10,00,000/- and earnest money is Rs. 2,50,000/-. Public auction of the property shall be held on 29.8.2007 at the site.

In pursuance to the aforementioned order passed by the Tribunal, the Recovery Officer has issued auction notice on 17.7.2007 (P-2). The date of auction has been fixed as 27th, 28th and 29th of August, 2007.

Mr. H.S. Sethi, learned counsel for the petitioner has submitted that the valuation of the property belonging to the petitioner is on extreme lower side as plot measuring 3 Kanals 19 Marlas is valued at Rs. 12,00,000/- as is evident from the reserve price fixed by the respondents. According to learned counsel, the respondents should first auction the properties belonging to the principal borrowers, which is valued at Rs. 2,54,000/- and Rs. 10,00,000/- respectively and if any amount remains outstanding then the same could be either realised from the petitioner or the property belonging to him could be sold. He has further submitted that respondent Nos. 3 and 4 have an industrial shed and machinery, which has not been included in the auction notice.

Having heard learned counsel, we find that the liability of the guarantor is co-terminus with the liability of the principal borrower. Moreover, it is not a case where the value of the property of the principal borrower at Sr. No. 2 and 3 (supra) as assessed by the respondent bank exceeds the amount of recovery to be effected. The reserve price fixed by

the respondent bank in respect of all the three properties would show that even at the reserve price, the total outstanding amount may not be realised. Therefore, it is not a case where interference of this Court would be warranted. With regard to the second submission made by learned counsel that the industrial shed along with machinery should have been put to auction first which belonged to the principal borrowers, we have repeatedly asked Mr. Sethi to show that the left out property is also a secured asset with the respondent bank. He has not been able to show anything to that effect. Therefore, no relief on that score could be issued. The writ petition is devoid of merit, hence the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL
August 21, 2007 **JUDGE**
Pkapoor

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